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CHARLES PRIYA MARIE

v.

KOSHY CHERIAN

B

HIGH COURT MALAYA, KUALA LUMPUR
SURAYA OTHMAN J
[ORIGINATING SUMMONS NO: S8-24-87-2007]
12 MARCH 2010

C

CIVIL PROCEDURE: *Reciprocal enforcement of judgments - Setting aside registration of foreign judgment - Whether judgment recognised by law of Malaysia - Action in personam - Matrimonial causes or matters - Whether judgment final and conclusive - Matrimonial property - Jurisdiction of original court - Reciprocal Enforcement of Judgments Act 1958, ss. 2, 3(3), 5(2), (3)*

D

CIVIL PROCEDURE: *Judgment and orders - Setting aside - Foreign judgment, registration of - Whether judgment recognised by law of Malaysia - Action in personam - Matrimonial causes or matters - Whether judgment final and conclusive - Matrimonial property - Jurisdiction of original court - Reciprocal Enforcement of Judgments Act 1958, ss. 2, 3(3), 5(2), (3)*

E

This was an application by the judgment debtor ('JD') pursuant to s. 5 of the Reciprocal Enforcement of Judgments Act 1958 ('Act') to set aside an order of the court dated 14 May 2008 in respect of the registration of a Singapore High Court ('SHC') order dated 3 August 2007 ('foreign judgment'). The contentious issues were as follows: (i) whether the foreign judgment which originated from an order of the Singapore Subordinate Court ('SSC') dated 26 April 2006 could be deemed to be a judgment from a superior court of a reciprocating country and whether the foreign judgment was recognised by the law of Malaysia *ie*, the Act; (ii) whether the foreign judgment was given in an action *in personam* and whether the Act would be applicable to foreign judgments arising from matrimonial causes or any proceedings in connection with any matrimonial matters as in the present case; (iii) whether the foreign judgment was final and conclusive; and (iv) whether the subject matter of matrimonial proceedings involved immovable property outside the country of the original court and, if so, whether the original court had jurisdiction.

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Held (allowing the JD's application):

(1) Section 5(2) of the Act is very clear that the jurisdiction of the original court must be recognised by the law of Malaysia and under the Act, only the superior court (High Court of Singapore) is recognised. Therefore, the Subordinate Court of Singapore has no jurisdiction as it is not recognised under the Act. On the facts, it was beyond doubt that although the judgment of the SSC had been affirmed by the SHC, it was an indisputable fact that the real intention of the judgment creditor ('JC') in having the matter transferred from the SSC to the SHC was to enable the SSC's judgment to be registrable under the Act. To allow the judgment originating from the SSC to be registered under the Act would clearly defeat the purpose of the Act. *Excelmore Trading Pte Ltd v. Excelmore Classics Sdn Bhd* (foll). (paras 12-14)

(2) In the context of s. 2 of the Act, an "action *in personam*" shall not be regarded as including any matrimonial cause or any proceedings in connection with any matrimonial matters. There is no ambiguity in the said provision. In view of this, the provision under s. 5(2)(a) of the Act could not be invoked by the JC on the facts of the present case. Furthermore, since Singapore (as can be seen from its own provisions) is not prepared to recognise a foreign judgment pertaining to a matrimonial matter arising from an action *in personam* coming from other countries, why then, should Malaysia accord recognition to similar judgments coming from Singapore. (paras 24-26)

(3) The order of the original court dated 26 April 2006 was the SSC order. The SSC order and the SHC order (affirming the SSC order) both provide that the parties were at liberty to apply to vary the orders. As such, the orders were not final and conclusive as between parties pursuant to s. 3(3) of the Act, which meant that Part II of the Act (which includes ss. 3, 4, 5, 6 and 7) would not apply to either order since they could be varied or modified. (para 32)

(4) Section 5(3) of the Act would apply to oust the jurisdiction of the Singapore Courts in making any order in respect of the contribution made by the JC towards the purchase of the matrimonial property in Malaysia. This is because it does not

differentiate between actual property and the proceeds of sale from that property, as long as that property is situated outside the country of the original court (Singapore Court). *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v. Wiryadi Louise Maria and others* (foll). (para 36)

Case(s) referred to:

Amanah Merchant Bank Bhd v. Lim Tow Choon (Through Official Assignee) [1994] 2 CLJ 1 SC ***(refd)***

Cheong Ghim Fah and Another v. Murugian Rangasamy (No 2) [2004] 3 SLR 193 ***(refd)***

Excelmore Trading Pte Ltd v. Excelmore Classics Sdn Bhd [1996] 1 LNS 392 HC ***(foll)***

Harrop v. Harrop [1920] 3 KB 387 ***(refd)***

Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v. Wiryadi Louise Maria and others [2007] 4 SLR 565 ***(foll)***

Santong Trading Pte Ltd v. HJ Industries Sdn Bhd [1996] 3 CLJ 954 HC ***(refd)***

Legislation referred to:

Maintenance Orders (Facilities For Enforcement) Act 1949, ss. 3, 6

Reciprocal Enforcement of Judgments Act 1958, ss. 2, 3(1), (3), 4, 5(1), (2), (3), 6, 7

Reciprocal Enforcement of Foreign Judgment Act [Sing], s. 2(2)

Other source(s) referred to:

Hardial Singh Khaira's, *Enforcement of Foreign Judgements Over Immovable Property in Malaysia* [2007] 1 QLR 34

Reciprocal Enforcement of Judgment and Service of Process in Malaysia [1981] MLJ cxvi

For the judgment creditor - Ong Chin Siong; M/s Siong & Rita
For the judgment debtor - GT Fernandez; M/s GT Fernandez & Co

Reported by Suresh Nathan

JUDGMENT

Suraya Othman J:

Introduction

[1] This is an application by the judgment debtor ("JD") by way of summons in chambers ("SIC") in encl. 10 pursuant to s. 5 of the Reciprocal Enforcement of Judgments Act 1958 (Act 99) ("REJA Act 1958") to set aside the order of the court dated

14 May 2008 in respect of the registration of the Singapore High Court order ("SHC") dated 3 August 2007 ("the foreign judgment"). The details of the JD's application prayed for are as follows:

(a) that an order be granted to set aside the order dated 14 May 2008 allowing the registration of the foreign judgment;

(b) that costs of this application be costs in the cause;

(c) other orders and reliefs this honourable court deems just and reasonable.

Grounds For The Application

[2] The JD laid down reasons for the application, which are among others:

(a) the Singapore High Court order (foreign judgment) dated 3 August 2007 should not have been registered under the Reciprocal Enforcement of Judgments Act 1958 (REJA);

(b) the Singapore High Court order originates from the Singapore Subordinate Court order ("SSC order") dated 26 April 2006. The SSC order is not recognised under REJA Act 1958;

(c) the enforcement of the Singapore High Court order (foreign judgment) against the JD contravenes the public policy of Malaysia;

(d) the Singapore High Court order (foreign judgment) pertains to a claim by the JC for her contribution towards the purchase of an immovable property (matrimonial asset) located in Malaysia;

(e) the JC had failed to disclose that the JD had complied with part of the Singapore High Court order (foreign judgment);

(f) the JD is not in a position to completely comply with the Singapore High Court order (foreign judgment); and

(g) that there is a divorce petition filed by the JD, no. S8-33-1010-2006 which has not been fixed for hearing.

[3] Facts And Background

(a) The JD is a Malaysian citizen and the JC is a Singaporean citizen. They were married on 26 December 1998 in Selangor, Malaysia.

(b) The marriage broke down and the JC returned to Singapore, taking with her the only child of the marriage, Reuben Cherian Koshy who suffers from a medical condition known as autism.

(c) By an order dated 26 April 2006, the Singapore Subordinate Court made the following orders (SSC order), *inter alia*:

(i) that the JC has sole custody, care and control of the child of the marriage, Rueben Cherian Koshy and the JD has supervised weekend access once a month from 9am to 9pm;

(ii) that the JD pays the JC the sum of S$1000 per month for the maintenance of the child with effect from 30 April 2006;

(iii) that the JD pays the JC the sum of S$11,000 towards the child's medical and educational expenses in the past 11 months;

(iv) that the JD pays the JC the sum of RM145,851.05 being her contribution towards the purchase of the matrimonial property at No. 11 Jalan Ara SD 7/1E, Bandar Sri Damansara, 52200 Kuala Lumpur, Malaysia; and

(v) that the JD pays the JC costs of S$2,500.

(d) Pursuant to a summons filed by the JC against the JD in the Singapore High Court seeking to review the SSC order dated 26 April 2006 for the purpose of variation, the Singapore High Court on 3 August 2007, after hearing both parties, affirmed the SSC order. This order dated 3 August 2007 (foreign judgment) is the subject matter herein.

(e) The JC then filed an originating summons in the High Court of Malaya in Kuala Lumpur to have the foreign judgment registered. On 14 May 2008 the Judicial Commissioner, Hinshawati Shariff allowed the application.

(f) The said order of 14 May 2008 ordered the registration of all the ancillary reliefs made in the divorce proceedings originally initiated by the JC against the JD in the Singapore Subordinate Court *via* suit No. 3042/2005/X which is affirmed by the Singapore High Court on 3 August 2007. The said order also granted the JD the liberty to set aside the registration of the foreign judgment within one month from the service of the order.

(g) The JD, unhappy with the order of court dated 14 May 2008, filed this SIC, encl. 10 to set it aside.

Judgment Of The Court

1st Issue

Whether The SHC Order (Foreign Judgment) Dated 3 August 2007 Which Originates From The SSC Order Dated 26 April 2006 Can Be Deemed To Be A Judgment From A Superior Court Of A Reciprocating Country. Whether The Foreign Judgment Is Recognised By The Law Of Malaysia (REJA Act 1958)

[4] It is not disputed that the judgment sought to be enforced by the JC in this action originated from an action from the Singapore Subordinate Court in a divorce proceeding which was subsequently affirmed by the Singapore High Court when the JC made an application for variation.

[5] Section 3 of REJA Act 1958 ("said Act") states that the registration of judgments from reciprocating countries extend to judgments given in the superior courts of the reciprocating countries.

> **Part II to extend to reciprocating countries**
>
> 3. This Part shall extend to judgments given in the superior courts of the reciprocating countries.

[6] Section 2 defines reciprocating country to mean "any country or territory including the United Kingdom to which this Act for the time being applies and which is specified in the First Schedule"; superior courts to mean "the courts of a reciprocating country so described in the First Schedule" and original court to mean "in relation to any judgments means the court by which the judgment was given".

[7] Under the First Schedule, only the High Court of Singapore is a court that is recognised as a superior court.

[8] It must be noted that the application by the JD to set aside the foreign judgment is made under s. 5 of the REJA Act 1958.

[9] Section 5 of REJA Act 1958 states:

Cases in which registered judgments must, or may, be set aside.

5. (1) On the application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:

(a) shall be set aside if the registering court is satisfied:

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act.

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case.

[10] Section 5(2)(c) of the said Act states:

5(2)(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), **if the jurisdiction of the original court is recognised by the law of Malaysia.**

[11] Therefore, in these circumstances can it be said that the SHC order (foreign judgment) which originates from the SSC order can be deemed to be a judgment given by a superior court of a reciprocating country?

[12] It must be noted that the meaning of original court is the court by which the judgment was given. In this case, the original court is the Singapore Subordinate Court. As such, is the Singapore Subordinate Court recognized by the law of Malaysia as having jurisdiction? Section 5(2) is very clear that the jurisdiction of the original court must be recognized by the law of Malaysia and under REJA Act 1958, only the superior court (High Court Singapore) is recognized. Therefore, the Subordinate Court of Singapore has no jurisdiction as it is not recognized under REJA Act 1958.

[13] The decision of *Excelmore Trading Pte Ltd v. Excelmore Classics Sdn Bhd* [1996] 1 LNS 392 is authority for the principle that judgments of the Subordinate Courts of Singapore are not registrable though they have been registered as judgments of the High Court. The plaintiff in that case in having the judgment registered in the High Court of Singapore was trying to circumvent the Act. The court held that to allow the registration of such a judgment is to negate the clear provisions of s. 3(1) of the Act which provides that

the Act shall extend to judgments given only in the superior courts of reciprocating countries and in the case of Singapore, the superior court is the High Court.

[14] On the facts of the present case, I agree with learned counsel for the JD, Mr JT Fernandes, that it is beyond doubt that although the judgment of the SSC had been affirmed by the SHC, it is an indisputable fact that the real intention of the JC in having the matter transferred from the SSC to the SHC was to enable the judgment of the SSC to be registrable under the Act. That would bring this case squarely within the facts of *Excelmore Trading* referred to above and applying the principle in the case to allow the judgment originating from the SSC to be registered under REJA would clearly defeat the purpose of the Act which is purely for the purpose of reciprocal enforcement of judgments originating from only the Superior Courts of reciprocating countries.

[15] The above decisions of *Excelmore Trading Pte Ltd* was referred to and found favour by the Singapore High Court in the case of *Cheong Ghim Fah and Another v. Murugian s/o Rangasamy (No 2)* [2004] 3 SLR 193. At p. 200 of the said judgment, His Lordship VK Rajah JC held as follows:

> There is yet another reason why I was persuaded that it was appropriate to initiate the subject's proceedings in the High Court. It seems clear to me that if a subordinate court judgment cannot be enforced as a foreign judgment in another jurisdiction, this should be a "sufficient reason" for initiating the action in the High Court. Historically, common law courts in various jurisdiction have only recognized judgments of other foreign superior courts for the purpose of enforcement ...
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> ... Indeed only judgments of foreign superior courts are recognized in Singapore for the purpose of statutory enforcement; see Reciprocal Enforcement of Commonwealth Judgments Act ... and Reciprocal Enforcement of Foreign Judgments Act ...

[16] In our present case, the said order of 14 May 2008 registering the SHC order (foreign judgment) makes specific reference to the order of the SSC. The order of 14 May 2008 ordered the registration of all the ancillary reliefs made in the divorce proceedings originally initiated by the JC against the JD in the Singapore Subordinate Court *via* suit no 3042/2005X which is affirmed by the Singapore High Court on 3 August 2007. Thus, it

A is very clear that the foreign judgment is in effect nothing more than a judgment of the SSC which is not registrable under REJA Act 1958. As s. 5(2)(c) of the said Act makes it clear that only if the jurisdiction of the original court (Singapore Subordinate Court) is recognized by the law of Malaysia will the original court (SSC) B be deemed to have jurisdiction which is clearly not the case here, the registration of the foreign judgment, may be set aside.

2nd Issue

C *The Next Issue That Needs To Be Considered Is Whether The SHC Order (Foreign Judgment) Is A Judgment Given In An Action In Personam. Whether REJA Act 1958 Would Be Applicable To Foreign Judgments Arising From Matrimonial Causes Or Any Proceedings In Connection With Any Matrimonial Matters Such As The Present Case Before Us*

D **[17]** Under s. 2 of the said Act, action *in personam* is defined as:

> 'action *in personam*' shall not be deemed to include any matrimonial cause or any proceedings in connection with any matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of E infants.

[18] Counsel for the JC, Mr C.S. Ong, submitted that s. 2 of the said REJA Act 1958 does not expressly exclude judgments made in a matrimonial proceeding. He further submitted that s. 2 in F providing that "action *in personam* shall not be deemed to include" can and should be read as "not automatically deemed to include" and nor "shall exclude" as a reader would normally be quick to assume. He argued that there must be a reason why parliament did not use the phrase "action *in personam* shall not include" and in G absence of any explanation for such a reason it must be taken to mean that before excluding orders or judgments from a matrimonial related matter, the REJA Act 1958 requires one to look into the nature of the order sought to be registered.

H **[19]** He further argued that only if the order relates to a matrimonial matter such as enforcing right of custody decreed by a foreign court, does this provision become a relevant consideration. He asserted that the JC's application is solely to seek enforcement of a foreign judgment for payment of money and nothing else. I Further, the phrase "action *in personam*" only appears at s. 5(2)(a) of the REJA Act 1958 which clearly provides that the said subsection's operation is limited for the purpose of s. 5.

[20] Added to that, s. 5(2)(a) of REJA Act 1958, he argued, is a deeming provision of determining the jurisdiction of the original court. Reading this provision into the facts of the present case, s. 5(2)(a)(i) of REJA Act 1958 clearly provides that the Singapore High Court shall be deemed to have had jurisdiction. This is so since the JD had submitted to the jurisdiction of the said High Court by voluntarily appearing in the proceedings therein, the result of which was the making of the foreign judgment which is the subject matter of this action.

[21] From the facts of this case, it must be noted that the JC is seeking to enforce an order for ancillary reliefs granted by the Singapore Subordinate Court on 26 April 2006 pursuant to a divorce petition filed by the JC under Divorce Petition No. 3042/2005X. This order was subsequently affirmed on 3 August 2007 by the High Court of Singapore (SHC). The reliefs sought is not merely a judgment for the payment of money but in respect of reliefs prayed for and granted in favour of the JC in respect of matrimonial matters involving the JC and JD.

[22] In the case of *Amanah Merchant Bank Bhd v. Lim Tow Choon (Through Official Assignee)* [1994] 2 CLJ 1 the Supreme Court, on the meaning of the words "shall be deemed" used in a guarantee document, held that it meant "shall be regarded as".

[23] On the facts of the present case, even though the words "shall not be deemed" is in the context of a statutory provision *viz.* s. 2 of REJA Act, one may draw the same analogy as was done by the Supreme Court in the above case of *Amanah Merchant Bank Bhd.* The words "shall not be deemed" must mean "shall not be regarded as".

[24] As such in the context of s. 2 of REJA Act 1958 an "action *in personam*" shall not be regarded as including any matrimonial cause or any proceedings in connection with any matrimonial matters. Therefore, I agree with learned counsel for the JD that there is no ambiguity in the said provision in that matrimonial causes as well as any proceedings in connection with any matrimonial matters have been expressly excluded by virtue of s. 2 of REJA Act 1958. In view of the express exclusion of matrimonial causes as well as any proceedings in connection with any matrimonial matters in respect of an action *in personam*, the provision under s. 5(2)(a) of REJA Act 1958 cannot be invoked by the JC on the facts of the present case.

[25] The Singapore Reciprocal Enforcement of Foreign Judgment Act (Chapter 265) has similar provisions pertaining to an "action *in personam*" with regard to reciprocal enforcement of judgments in the Republic of Singapore. Section 2(2) of the Singapore Act, provides as follows:

> For the purpose of this Act, 'action *in personam*' shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters:
>
> (a) matrimonial matters ...
>
> (b) ...
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> (c) ...
>
> (d) ...
>
> (e) ...
>
> (f) ...

[26] It would seem that Singapore too, have similar provisions where the courts would also not recognize foreign judgments arising from an action *in personam* pertaining to matrimonial causes or any proceedings in connection with matrimonial matters. As such, I agree with Mr. J.T Fernandes that if Singapore is not prepared to recognize a foreign judgment pertaining to a matrimonial matter arising from an action *in personam* coming from other countries, why then, should Malaysia accord recognition to similar judgments coming from Singapore.

[27] In that light, the SHC order (foreign judgment) does not fall within the deeming provision of s. 5(2)(a) of REJA Act 1958 as s. 2 specifically excludes matrimonial causes or any proceedings in connection with any matrimonial matters.

3rd Issue

Whether The SHC Order Is Final And Conclusive

[28] It is not disputed that the foreign judgement allows the parties the liberty to apply to vary the judgment should there be any material change in circumstances as in any matters pertaining to matrimonial proceedings.

[29] Section 3(3) of REJA Act 1958 states that any judgment of a superior court must be final and conclusive between parties. Section 3(3) states as follows:

> 3. (3) Any judgment of a superior court, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if:
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> (a) it is final and conclusive as between parties thereto;

[30] In *Santong Trading Pte Ltd v. Hȳ Industries Sdn Bhd* [1996] 3 CLJ 954, His Lordship Mohd Ghazali Mohd Yusoff J (as he then was) held that the word "final" is intended to mean and should be construed as a meaning final in the sense of admitting no further disputation.

[31] In *Harrop v. Harrop* [1920] 3 KB 387, the facts were as follows. There was a judgment by a Judicial Commissioner of Perak which affirmed with a variation the previous order of a magistrate whereby it was adjudged that the defendant should pay to the plaintiff, his wife a certain sum per month for the maintenance of the plaintiff and the child of the marriage. When the parties came to England, the plaintiff brought an action against the defendant claiming five monthly payments alleged to be due under the judgment of the Judicial Commissioner. The court held that the judgment was not final and conclusive within the doctrine of English law which enables judgments of foreign courts to be enforced in England and the plaintiff therefore could not recover. In making the said order the court was guided by the fact that there was a provision in the order of the original court (ie, the Judicial Commissioner of Perak) which provided the parties with an avenue to apply to vary/modify the order according to new circumstances that may arise.

[32] In our present case, the order of the original court dated 26 April 2006 is the SSC order. The SSC order, including the SHC order, which affirmed the SSC order, both provide that the parties are at liberty to apply to vary the said orders. As such, the orders is not final and conclusive as between parties pursuant to s. 3(3) of REJA Act 1958 which means that Part II of REJA (which include ss 3, 4, 5, 6 and 7) will not apply to either the SSC nor the SHC order since it can be varied or modified.

4th Issue

Whether The Subject Matter Of Matrimonial Proceedings Involves Immovable Property Outside The Country Of The Original Court. If So, Whether The Original Court Has Jurisdiction

[33] Section 5(3) of REJA states that the courts of the original country shall not be deemed to have jurisdiction if the subject matter of the proceedings was immovable property outside the country of the original court. Section 5(3) is as follows:

> 5. (3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction:
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> (a) if the subject matter of the proceedings was immovable property outside the country of the original court.

[34] It is to be noted that the amount of payment of RM145,851.05 as stipulated in the order of 14 May 2008 is in respect of the payment by the JD to the JC for her contribution towards the purchase of the matrimonial property at No. 11 Jalan Ara SD 7/1E, Bandar Sri Damansara, 52200 Kuala Lumpur, Malaysia.

[35] In *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v. Wiryadi Louise Maria and others* [2007] 4 SLR 565, the Singapore Court of Appeal on the issue of the jurisdiction of the Indonesian court in respect of judgments on immovables situated outside Indonesia held as follows:

> If, under Singapore law, a foreign court has no jurisdiction to pronounce on the title of immovable property in Singapore, the fact that the property has been turned into proceeds of sale does not change the legal basis of the claim which remains the foreign judgment itself. Indeed, we are not aware of any decision that the absence of jurisdiction on the part of a foreign court in making such an order can be fed and satisfied by the proceeds of sale of the immovable property concerned ...

[36] Based on *Murakami Takako*'s case, s. 5(3)(a) of REJA Act 1958 would apply to oust the jurisdiction of the Singapore Courts to make any order in respect of the contribution made by the JC towards the purchase of the matrimonial property in Malaysia. This is so since it does not differentiate between actual property and the proceeds of sale from that property, as long as that property is situated outside the country of the original court (Singapore Court).

Maintenance Orders (Facilities For Enforcement) Act 1949 (Act 34) (MOFEA)

Since The JC Cannot Seek To Enforce The Foreign Judgment Under REJA, Are There Other Options Available For Her To Seek Remedy

[37] The JC can seek remedy under MOFEA which is an Act to facilitate the enforcement in Malaysia of maintenance orders made in reciprocating countries and *vice versa*. Section 3 of MOFEA provides for enforcement in Malaysia of maintenance orders made in reciprocating countries whereas s. 6 of MOFEA provides for power of a local court to confirm provisional orders of maintenance made in reciprocating countries against persons resident in Malaysia. The schedule to MOFEA provides *inter alia* that the Republic of Singapore is a reciprocating country. Therefore, the JC is not left without any remedy in that the JC may invoke the relevant provisions under the MOFEA for the enforcement of the Singapore Court Order pertaining to the maintenance payments for the child of the marriage.

[38] In respect of the SHC Order for the amount of RM145,851.05 ie, pertaining to the payment for the purchase of a matrimonial property in Malaysia, the JC may seek to enforce this part of the judgment by invoking the common law ie, by instituting a fresh suit in a court of this country under the original cause of action. (See the article entitled *Reciprocal Enforcement of Judgment and Service of Process in Malaysia* [1981] MLJ cxvi and also Hardial Singh Khaira's article entitled *Enforcement of Foreign Judgements Over Immovable Property in Malaysia* [2007] 1 QLR 34).

Conclusion

[39] Therefore, based on all the above, the application by the JD in encl. 10 pursuant to s. 5 of the REJA Act 1958 to set aside the order of court dated 14 May 2008 in respect of the registration of the SHC order (foreign judgment) is allowed with costs.